IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 382 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEVUBHAI KARSHANBHAI AHIR

Versus

DEEPAKKUMAR ROOPCHAND DHOKAI

Appearance:

MR NILESH A PANDYA for Petitioner

MR PRAVIN GONDALIA FOR MR YOGESH S LAKHANI for Respondent No. 1

MR RC KODEKAR APP for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/03/2001

ORAL JUDGEMENT

#. Rule. Mr.Pravin Gondalia and Mr.R.C.Kodekar waive service of Rule on behalf of respondent No.1 and 2 respectively. Heard the learned counsel for the parties.

#. By this petition under Article 227 of the Constitution of India , the petitioner is praying for quashing and setting aside of the order of the Judicial Magistrate, First Class, Dwarka, dated 10th March, 2000 in Criminal Case No.12/2000 and that of the Addl. Sessions Judge, Jamnagar dated 20th April, 2000, in Criminal Revision Application No.25/2000, in the matter of release of vehicle - luxury bus No.GJ-10-T-9474 in his favour.

#. The facts of the case are that the petitioner is the owner of luxury bus No.GJ-10-T-9474. He is shown as the owner of this vehicle in the register maintained by the Regional Transport Officer concerned of the vehicles. It is stated that the petitioner is regularly paying taxes. The permit under which this luxury bus is covered is also in the name of the petitioner. He has taken insurance of the said vehicle also in his name. A copy of the certificate of registration is there on the record at page No.19 and therefrom, I find that the petitioner is the registered owner of the same. This fact has also not been denied by respondents by filing reply to the special criminal application. Similarly the fact has also not been denied by respondents by filing reply to the special criminal application that the permit under which the vehicle is covered is also in the name of the petitioner, the petitioner is regularly paying taxes of the vehicle and insurance has also been taken by him for this vehicle. The respondent No.1 - Deepakkumar Roopchand Dhokai filed a criminal complaint before the Judicial Magistrate, First Class, Dwarka. In this complaint it is stated that he has purchased this bus from the petitioner. On this criminal complaint filed by respondent No.1, the police has taken custody of the bus from the place situated near the office of the petitioner at Jamnagar. The petitioner filed a complaint to hand over custody of the vehicle to him as the owner of the vehicle. The respondent No.1 also applied for custody of the vehicle. The learned Judicial Magistrate allowed the application of respondent No.1 and ordered that the custody of the vehicle be given to him on a condition that he should furnish a bond of Rs.10 lacs and also give an undertaking to the effect that he shall not transfer the vehicle in question. Against this order, the petitioner filed criminal revision application which came to be rejected by the Addl. Sessions Judge, Jamnagar. Hence this special criminal application.

#. It is a case where in the matter of transport vehicle the registered owner thereof and the permit holder are

making all the fraud with the Motor Vehicles Act, 1988. The registration of the vehicle in dispute is in the name of the petitioner. Same is also position with the permit under which it is covered. Even if it is taken that there was some agreement for sale of this vehicle by petitioner to the respondent No.1, it may be a civil dispute but not a criminal case. It is a case where the respondent No.1 has certainly made use of this criminal machinery for the purpose of taking possession of the vehicle. In case where registration of the vehicle is in the name of the petitioner and permit is also in his name, the courts should have ordered for custody of this vehicle to the petitioner rather than to reject his application. Rest is the dispute between the parties, re.: their civil rights for which appropriate course for the respondent No.1 would have been to file civil suit. It is not in dispute that the registration of the vehicle has not been transferred in the name of respondent No.1. It is also not the case that permit has been transferred in the name of respondent No.1 under which this vehicle is covered. Otherwise also, the respondent No.1 has no right whatsoever to ply this vehicle which is in the name of the petitioner and the permit is also in the name of the petitioner under which it is covered. Unless the vehicle is transferred and the permit is also transferred how far it is justified for respondent No.1 to make use of this criminal machinery for taking possession of the vehicle. At the cost of repetition, it is to be stated that at the most, it may be a civil dispute for which appropriate remedy is available to respondent No.1 but custody of the vehicle cannot be given to respondent No.1.

#. In the result, this special criminal application succeeds and the same is allowed and the order of the Judicial Magistrate, First Class, Dwarka, dated 10th March, 2000 in Criminal Case No.12/2000 and that of the Addl. Sessions Judge, Jamangar dated 20th April, 2000, in Criminal Revision Application No.25/2000 are quashed and set aside and the application of the petitioner for release of vehicle in his favour is allowed and the custody of luxury bus No.GJ-10-T-9474 is ordered to be given to the petitioner, and in the facts of the case, i.e. he is the registered owner of the vehicle and also permit stands in his name, without any condition whatsoever. However, it is made clear that whatever findings given and observations made or anything said on merits of the criminal complaint in this order is to be taken only for the purpose of deciding this special criminal application and not on merits of the matter. It is further made clear that in case where the respondent

No.1 files civil suit, the civil court is free to pass appropriate order in respect of custody of the vehicle in accordance with law. Rule is made absolute accordingly with no order as to costs.

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(sunil)